IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 27440 of 2004(N)

OS.506/1996 of MUNSIFF COURT, THALIPARAMBA

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PETITIONER:

MANHERI SUSHEELA,
W/O. KUNHIRAMAN AGED 39 YEARS,
KUTTIADAN HOUSE, P.O.PARIKALAM.

BY ADV. SRI.RAJESH NAMBIAR

RESPONDENTS:

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1. KUNHIRAMAN, AGED 65 YEARS,
'SREEDEVIPURAM", KALLIAD P.O.KALLIAD,
PADIYOOR VILLAGE.

2. SREEDHARAN, ILLAMULLA PARAMBIL,
MAMANAM, P.O. IRIKKUR.

3. MANCHARAN, ILLAMULLA PARAMBIL,
MAMANAM, P.O.IRIKKUR.

BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.M.HARISHARMA
SMT.O.K.SANTHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14.6.2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 27440/2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ORDER OF MUNSIFF, TALIPARAMBA DATED 25.2.2003 IN I.A.2054/01 IN O.S. 506/96

EXT.P2: COPY OF THE ORDER OF the COURT OF MUNSIFF, TALIPARAMBA DATED 28.2.2003 IN I.A. NO. 2054/01 IN O.S. 506/96

EXT.P3: COPY OF I.A. 739/03 IN O.S. 506/96 DATED 28.2.2003

EXT.P4: COPY OF THE ORDER OF THE COURT OF MUNSIFF IN I.A. 739/2003 IN O.S. 506/96 DATED 18.8.2003

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 27440 of 2004

Dated this the 14th day of June 2007

JUDGMENT

Ext.P4 order by which the learned Munsiff has dismissed the application submitted by the petitioner plaintiff for restoration of the suit which was dismissed for default on the reason that the cost of Rs.500/- each payable to the 3rd respondent was not paid on time is under challenge. The writ petition is remaining defective on the reason that the first respondent who was the first defendant is yet to be served. In my opinion, since in the matter of Ext.P4, the interest of respondents 2 and 3 is common to that the first respondent, it is not necessary that this court wait till the first respondent is also served. There is appearance for respondents 2 and 3.

2. Having regard to the submissions addressed before me, I am of the view that though technically the reason stated by the learned Judge in Ext.P4 may be correct, considerations

of justice require that the plaintiff was allowed to prosecute his suit. Under these circumstances, I am inclined to set aside Ext.P4 imposing solely harsher condition on the petitioner.

Ext.P4 will stand set aside and the writ petition will stand allowed on condition that the petitioner pays total amount of Rs.1,800/- (Rupees One Thousand Eight Hundred only) by way of cost. Out of which Rs.600/- (Rupees Six Hundred only) will be payable to each of the respondent.. Payment as directed shall be made by the petitioner within one month from today. Once the court below notices the receipt against the payment of the cost as ordered above, the court below will re-post the suit and proceed with trial from the stage at which the suit was dismissed. If payment is not made, the writ petition will stand dismissed.

PIUS C. KURIAKOSE,
JUDGE.

dpk